Private National Mortgage Acceptance Company LLC ("PennyMac") ***and*** **Richard Smigelski.** Case 20–CA–170020

December 9, 2019

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On November 29, 2016, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. In addition, the General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order.

The judge found, among other things, that the Respondent violated Section 8(a)(1) of the Act by maintaining an arbitration agreement that employees would reasonably believe precluded them from filing charges with the National Labor Relations Board. As explained below, we reverse this finding.

Since 2008, the Respondent has maintained and enforced a companywide Mutual Arbitration Policy (MAP). The MAP states, in relevant part:

> Private National Mortgage Acceptance Company, LLC and its subsidiaries ("PennyMac") have adopted and implemented a new arbitration policy, requiring mandatory, binding arbitration of disputes, for all employees, regardless of length of services. This memorandum explains the procedures, as well as how the Arbitration Policy and related rules work as a whole. Please take the time to read this material. It applies to you. It will govern all existing or future disputes between you and PennyMac that are related in any way to your employment.
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> …
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> The MAP applies to PennyMac employees, regardless of length of service or status, and covers all disputes relating to or arising out of an employee's employment with PennyMac or the termination of that employment. Examples of the type of disputes or claims covered by the MAP include, but are not limited to, claims against employees for fraud, conversion, misappropriation of trade secrets, or claims by employees for wrongful termination of employment, breach of contract, fraud, employment discrimination, harassment or retaliation under the Americans With Disabilities Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 and its amendments, the California Fair Employment and Housing Act or any other state or local antidiscrimination laws, tort claims, wage or overtime claims or other claims under the Labor Code, or any other legal or equitable claims and causes or action recognized by local, state or federal law or regulations. *The MAP does not cover* workers' compensation claims, unemployment insurance claims or any *claims that could be made to the National Labor Relations Board.*

(Emphasis added.) The MAP also provides that both the employee and PennyMac "forego any right either may have to a jury trial" on covered claims, and both "waive any right to join or consolidate claims in arbitration with others or to make claims in arbitration as a representative or as a member of a class or in a private attorney general capacity, unless such procedures are agreed to by both" the employee and PennyMac.

The Respondent also requires its employees to sign an Employee Agreement to Arbitrate (EAA), which states, in relevant part:

> I acknowledge that I have received and reviewed a copy of Private National Mortgage Acceptance Company, LLC's Mutual Arbitration Policy ("MAP") and the American Arbitration Association ("AAA"), and I understand that it is a condition of my employment. I agree that it is my obligation to make use of the MAP and to submit to final and binding arbitration any and all claims and disputes that are related in any way to my employment or the termination of my employment with Private National Mortgage Acceptance Company, LLC, *except those permitted by the MAP*.

(Emphasis added.)

On May 10, 2016, the General Counsel issued a complaint alleging that the Respondent violated Section 8(a)(1) by maintaining the MAP and EAA, which required employees to "waive their right to resolution of employment-related disputes by collective or class action," and by attempting to enforce these agreements in

Sacramento County Superior Court on February 12, 2016. The General Counsel amended the complaint on July 14, 2016, to add an allegation that the Respondent violated Section 8(a)(1) by attempting to enforce the MAP in Sacramento County Superior Court on March 25, 2016.

On July 27, 2016, the General Counsel and the Respondent submitted this case to the judge on a stipulated record. Their joint stipulation stated that this case presented the following two issues:

> 1. Whether Respondent violated Section 8(a)(1) of the Act by implementing and maintaining the MAP, a company-wide arbitration policy that applies to most employment-related disputes, because the MAP requires employees, as a "mandatory condition of employment," to "forego and waive any right to join or consolidate claims in arbitration with others or to make claims in arbitration as a representative or as a member of a class or in a private attorney general capacity, unless such procedures are agreed to by both [the employee] and PennyMac."
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> 2. Whether Respondent violated Section 8(a)(1) of the Act by seeking to compel Charging Party to submit his claims alleged in *Smigelski v. PennyMac Financial Services Inc.*, Sacramento Superior Court Case No. 34-2015-00186855, to arbitration in accordance with the MAP.

Thereafter, on August 15, 2016, the General Counsel filed a motion seeking to further amend the complaint to allege that the implementation and maintenance of the MAP and EAA are unlawful on an additional basis: that a reasonable employee would read them as precluding him or her from filing an unfair labor practice charge with the Board. The Respondent filed an opposition to the motion, arguing that the General Counsel cannot add a new issue to the case following the submission of the joint stipulation. In support, the Respondent noted that the General Counsel rejected the Respondent's offer to withdraw the joint stipulation and jointly submit a new stipulation incorporating the new allegation.

On August 29, 2016, Administrative Law Judge Dickie Montemayor issued an order granting the General Counsel's motion. The parties did not thereafter seek to amend the joint stipulation.

On November 29, 2016, Administrative Law Judge Raymond P. Green issued a decision on the merits of the case. Relying on *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), the judge found that the Respondent violated Section 8(a)(1) by maintaining the MAP because the agreements required employees to waive their right to pursue class or collective actions in all forums. He also found that employees would reasonably read the MAP as barring or restricting them from filing charges with the Board, but he did not reference this additional finding in his conclusions of law, remedy, recommended Order, or notice to employees.

On November 16, 2018, the Board issued a Decision, Order, and Notice to Show Cause in this case. The Board dismissed the allegations that the Respondent unlawfully maintained and attempted to enforce the MAP in light of the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S. Ct. 1612 (2018), in which the Court held that employer-employee agreements that contain class- and collective-action waivers and require individualized arbitration do not violate Section 8(a)(1) of the Act and should be enforced as written pursuant to the Federal Arbitration Act (FAA). The Board also gave notice to the parties to show cause why the remaining issue in the case—whether the Respondent's mandatory arbitration agreements unlawfully restrict employee access to the Board—should not be remanded to the judge for further proceedings in light of the Board's decision in *Boeing Co.*, 365 NLRB No. 154 (2017).[1] The Respondent and the General Counsel each filed a response to the Notice to Show Cause. Neither requested that this case be remanded to the judge, and each provided further arguments on the merits of the remaining allegations. In view of the parties' responses, and since the remaining allegations may be decided based on the existing record, we find that a remand is unnecessary.

On exception, the General Counsel contends that the judge correctly found the MAP and EAA unlawful on the basis that employees would reasonably conclude that they were prohibited from filing charges with the Board, but he inadvertently failed to include this finding in his conclusions of law, remedy, recommended Order, and notice. The Respondent contends that the judge erred in finding the violation but adds that, in any event, his omission of the finding from the conclusions of law,

[1] In *Boeing*, the Board overruled the "reasonably construe" prong of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and announced a new standard, which applies retroactively, for evaluating the lawfulness of a facially neutral policy. 365 NLRB No. 154, slip op. at 3. Under *Boeing*, the Board first determines whether a challenged rule or policy, when reasonably interpreted, would potentially interfere with the exercise of rights under Sec. 7 of the Act. If not, the rule or policy is lawful. If so, the Board evaluates two things: "(i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." Id. The *Boeing* standard replaced the "reasonably construe" prong of *Lutheran Heritage*. Other aspects of *Lutheran Heritage* remain intact, including whether a challenged rule or policy explicitly restricts activities protected by Sec. 7. 343 NLRB at 646.

remedy, recommended Order, and notice was not inadvertent. Rather, the Respondent contends, the omission was deliberate and in recognition of the fact that the Respondent's due process rights would be violated by its inclusion.

Contrary to the judge and the General Counsel, we find that consideration of this allegation on the merits is precluded by the parties' stipulation, and therefore the allegation must be dismissed.

"The Board has long held that a stipulation is conclusive on the party making it and prohibits any further dispute as to the stipulated matters." *Labor Ready Southwest*, 363 NLRB No. 138, slip op. at 1 fn. 1 (2016) (citing *Woodland Clinic*, 331 NLRB 735, 741 (2000)). The Board adheres strictly to the parties' stipulation, "due, at least in part, to the parties' choice to forgo offering evidence at the hearing in favor of reliance on the stipulation." *Arbors at New Castle*, 347 NLRB 544, 545 (2006).

In *Labor Ready Southwest*, the Board found that the administrative law judge correctly declined to consider a complaint allegation not included among the stipulated issues presented for resolution. In support, the Board noted that the General Counsel stipulated to the issues presented, the stipulation did not include the additional complaint allegation, and the Respondent could reasonably rely on that stipulation in deciding not to submit evidence relevant to the additional allegation. 363 NLRB No. 138, slip op. at 1 fn. 1. Here, as in *Labor Ready Southwest*, the parties' stipulation did not include one of the allegations in the amended complaint—specifically, the allegation concerning the MAP's restriction of employee access to the Board. Indeed, the General Counsel rejected the Respondent's offer to withdraw the joint stipulation and jointly submit a new stipulation incorporating the new allegation. In the absence of a stipulated issue addressing this allegation, the issue was not presented for decision, and the judge erred in reaching the merits of this allegation.

In addition, even if the issue had been properly raised to the judge, we would dismiss the allegation. As noted above, the MAP includes language explicitly excluding from its coverage "any claims that could be made to the National Labor Relations Board." This exclusion clause precludes a finding that the MAP reasonably interferes with employees' right to file charges with the Board.

In *Prime Healthcare Paradise Valley, LLC*, the Board held that "an arbitration agreement that explicitly prohibits the filing of claims with the Board or, more generally, with administrative agencies must be found unlawful" because "[s]uch an agreement constitutes an explicit prohibition on the exercise of employee rights under the Act." 368 NLRB No. 10, slip op. at 5 (2019). The Board further stated that where an agreement does not explicitly prohibit the filing of claims with the Board, the Board will apply the standard set forth in *Boeing* and initially "determine whether that agreement, 'when reasonably interpreted, would potentially interfere with the exercise of NLRA rights.'" Id. (quoting *Boeing*, above, slip op. at 3). "The 'when reasonably interpreted' standard is objective and looks solely to the wording of the rule, policy, or other provision at issue[,] . . . interpreted from the employees' perspective." 368 NLRB No. 10, slip op. at 6 fn. 14.

Here, the MAP's exclusion clause carves out from the scope of the agreement "any claims" that could be made to the Board.[2] When interpreted from the perspective of objective, reasonable employees, this clause would assure them that the MAP does not require them to arbitrate claims that could be made to the Board. Thus, when reasonably interpreted, the MAP does not potentially interfere with employees' exercise of their right to access the Board or its processes.

As the MAP includes an effective exclusion clause, we would place it—assuming the issue were properly before us—in *Boeing* Category 1(a). *Boeing*, above, slip op. at 4 (Category 1(a) consists of "rules that are lawful because, when reasonably interpreted, they would have no tendency to interfere with Section 7 rights and therefore no balancing of rights and justifications is warranted") (footnote omitted). We similarly would find the EAA lawful, as it clearly incorporates the MAP's exclusion clause: "I agree that it is my obligation to make use of the MAP and to submit to final and binding arbitration any and all claims and disputes that are related in any way to my employment or the termination of my employment with Private National Mortgage Acceptance Company, LLC, *except those permitted by the MAP*" (emphasis added).

In sum, because the issue was not presented in the parties' joint stipulation, the judge erred in reaching the merits of the allegation that employees would reasonably believe that the Respondent's MAP and EAA prohibited them from filing charges with the Board. Moreover, even if the issue had been presented in the joint stipulation, neither the MAP nor the EAA interferes with employees' access to the Board and its processes. Accord-

[2] An exclusion clause in an arbitration agreement carves out or excludes certain claims or types of claims from the scope of the agreement. In contrast, a savings clause in an arbitration agreement provides that employees retain the right to file charges with the Board, even if the agreement otherwise includes claims arising under the Act within its scope. See *Briad Wenco, LLC d/b/a Wendy's Restaurant*, 368 NLRB No. 72 (2019).

ingly, we shall dismiss the remaining complaint allegation.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. December 9, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Min-Kuk Song, Esq., for the General Counsel.
Richard S. Zuniga, Esq., counsel for the Respondent.
Chris Baker, Esq., counsel for the Charging Party.

DECISION

RAYMOND P. GREEN, Administrative Law Judge. This case was presented to me by way of a stipulated record. The charge was filed on February 18, 2016, and served upon the Respondent on February 19, 2016. The Complaint was issued on May 10, 2016, and was thereafter amended on July 14 and August 15, 2016. In substance, the complaint as amended alleges (a) that the Respondent violated Section 8(a)(1) by implementing and maintaining a company-wide arbitration policy applicable to most employment-related disputes and which requires employees as a condition of employment to waive any right to join or consolidate claims in arbitration with others or to make claims as a representative or member of a class or in a private attorney general capacity, unless such procedures are agreed to by to both the company and the employee; and (b) that the Respondent violated Section 8(a)(1) by seeking to compel the Charging Party to submit his claims alleged in Smigelski v. PennyMac Financial Services Inc. to arbitration.

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

The stipulated facts are as follows:

1. The Respondent originates and services residential mortgage loans in 49 states, including California and the District of Columbia. Since 2008, the Respondent has maintained and enforced a company-wide Mutual Arbitration Policy, (referred to as MAP), that requires mandatory, binding arbitration of disputes for all employees as a mandatory condition of employment. MAP covers all disputes relating to or arising out of an employee's employment and requires employees to forego and waive any right to join or consolidate a claim with others or to make claims as a representative or as a member of a class. This essentially means that the Respondent's employees can pursue employment related claims only by way of arbitration and only on an individual basis. The Respondent requires every employee to sign a document called the Employee Agreement to Arbitrate, referred to herein as the EAA, pursuant to which they acknowledge and agree to the terms of the MAP.

2. The Charging Party, Smigelski was employed by the Respondent as an Account Executive from November 2014 to April 2015. He signed the EEA on November 17, 2014, and therefore acknowledged and agreed to the MAP.

3. The MAP states that it was adopted as a mandatory condition of employment and further states that an employee's decision to accept employment or to continue employment with PennyMac constitutes agreement to be bound by the MAP. The signed EEA also states that the MAP is a condition of employment. In pertinent part the provisions of the MAP are as follows:

> The MAP applies to PennyMac employees, regardless of length of service or status and covers all disputes relating to or arising out of an employee's employment with PennyMac or the termination of that employment. Examples of the types of disputes or claims covered by the MAP include, but are not limited to claims against employees for fraud, conversion, Misappropriation of trade secrets, or claims by employees for wrongful termination of employment, breach of contract, fraud, employment discrimination, harassment or retaliation under the American With Disabilities Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 and its amendments, the California Fair Employment and Housing Act or any other state or local anti-discrimination laws, tort claims, wage or overtime claims or other claims under the Labor Code or any other legal or equitable claims and cause or action recognized by local, state or federal law or regulations. The MAP does not cover workers' compensation claims, unemployment insurance claims or any claims that could be made to the National Labor Relations Board. The MAP also does not prohibit either PennyMac or any PennyMac employee from filing a claim in small claims court, as long as the claim properly is within the jurisdiction of the small claims court. Because the MAP changes the forum in which you may pursue claims against PennyMac and affects your legal rights, you may wish to review the MAP with an attorney or other advisor of your choice. PennyMac encourages you to do so.
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> Your decision to accept employment or to continue employment with PennyMac constitutes your agreement to be bound by the MAP Likewise, PennyMac agrees to be bound by the MAP. This mutual obligation to arbitrate claims means that both you and PennyMac are bound to use the MAP as the only means of resolving any employment-related disputes. This

> mutual agreement to arbitrate claims also means that both you and PennyMac forego any right either may have to a jury trial on claims in any way to your employment and both you and PennyMac forego and waive any right to join or consolidate claims in arbitration with others or to make claims in arbitration as a representative or as a member of a class or in a private attorney general capacity, unless such as procedures are agreed to by both you and PennyMac. No remedies that otherwise would be available to you individual or to PennyMac in a court of law, however, will be forfeited by virtue of this agreement to use and be bound by the MAP.

4. The MAP describes in some detail the arbitration process and states that the employee and the Respondent will share the cost of the American Arbitration Association's filing fee and the arbitrator's fees and cost, except that the employee's share shall not exceed the amount equal to the local court's civil filing fee. It also provides that except as otherwise provided by law, the employee will be responsible for the fees and costs of legal counsel plus other costs associated with witnesses and the obtaining of hearing transcripts.

5. The provisions of the MAP expressly exclude claims that might be made under the National Labor Relations Board. However, it is also clear that in the MAP provisions there is no description of what those types of claims might entail.

6. The parties stipulated that if called to testify, witnesses for the Respondent would testify that the Respondent's purpose in implementing the MAP was to create an expedient, efficient, more cost-effective and fair means to resolve employment-related disputes that cannot be resolved informally.

7. On November 17, 2014, Richard Smigelski signed the EEA wherein he acknowledged receipt of the MAP.

8. On November 17, 2015, Smigelski filed a Complaint against the Respondent in the Sacramento Superior Court, in case number 34-2015-00186855. This was entitled "Representative Action Complaint for Violation of the Private Attorneys General Act of 2004" (Labor Code Section 2698, et. seq.). In essence, this was an action on behalf of a class of non-exempt employees for alleged violations of wage and overtime laws.

9. On February 16, 2016, the Respondent filed a Petition to Compel Arbitration and Stay Action in the aforesaid law suit and sought to compel Smigelski to submit his claims to arbitration in accordance with the MAP.

10. On March 10, 2016, Smigelski filed a First Amended Complaint in Smigelski v. PennyMac.

11. On March 11, 2016, the Court issued an Order denying the Respondent's Petition to Compel Arbitration.

12. On March 25, 2016, the Respondent filed a Petition to Compel Arbitration and Stay Action in relation to the amended Complaint filed in Smigelski v PennyMac.

13. On March 25, 2016, the Respondent filed a Motion for Reconsideration regarding the Court's denial of its previous Petition to Compel Arbitration.

14. On April 22, 2016, the Sacramento Superior Court issued an Order denying the Respondent's Petition to Compel Arbitration.

15. On April 22, 2016, the Sacramento Superior Court issued an order denying the Respondent's Motion for Reconsideration.

III. DISCUSSION

This is another in a long line of cases involving whether (a) an employer can require its employees to agree, as a condition of continued employment, to utilize arbitration as an alternative to the judicial process for resolving employment disputes; and (b) whether an employer can require employees, as a condition of continued employment, to waive their ability to file class action claims. (Whether in a court or before an arbitrator).

It is the Board's current position, despite reversals by several Circuit Courts, that an employer will violate Section 8(a)(1) of the Act when it requires its employees to utilize arbitration to resolve employment disputes and when it precludes employees from acting in concert to bring class actions, whether in court or before an arbitrator.

In my capacity as an Administrative Law Judge of the NLRB, I am bound to follow Board precedent irrespective of contrary opinions by Circuit Courts, unless and until the Supreme Court makes a definitive ruling on the subject matter in dispute.

Therefore, this case is controlled by the Board's decision in *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), enf. denied 808 F.3d 1013 (5th Cir. 2015). In *Murphy Oil* and subsequent cases, the Board has consistently held that requiring employees to sign class action waivers, with or without an "opt out" clause, is a violation of Section 8(a)(1) of the Act.

Further, in light of the manner in which the MAP provisions are broadly drafted, I conclude that employees would have a reasonable basis for concluding that they would be precluded from filing charges with the National Labor Relations Board. In the absence of some reasonable explanation to employees of their rights under the National Labor Relations Act, the minimal statement to the effect that the MAP excludes charges filed with the Board is, in my opinion, insufficient to assure employees that their rights to file charges with the National Labor Relations Board have not been adversely affected. *SolarCity Corp.*, 363 NLRB No. 83, slip op. at 6 (2015).

Finally, in light of current Board precedent, I must reject the Respondent's contention that its Motions to compel individual arbitration were protected by the First Amendment's Petition Clause. The Supreme Court in *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731,731–743 (1983), noted that there were two situations where such legal actions do not enjoy the Amendment's protection. The first is where the action is outside the State Court's jurisdiction because of Federal preemption. And the second is where the action seeks to enforce a matter which is illegal under Federal law. The Board has therefore restrained litigation efforts that have an illegal objective of curtailing employees' Section 7 rights. *Murphy Oil*, supra, slip op. at 20–21, *Convergys Corp.*, 363 NLRB No. 51, slip op. at fn. 5 (2015).

CONCLUSIONS OF LAW

By maintaining a provision that requires employees to (a) waive the right to bring class actions or to act concertedly in regard to their terms and conditions of employment; (b) waive the right to initiate lawsuits regarding terms and conditions of their employment; and (c) by filing Motions in Court to compel

an employee to arbitrate on an individual basis a class action lawsuit relating to terms and conditions of employment, the Respondent has violated Section 8(a)(1) of the Act.

REMEDY

As it concluded that the Respondent has unlawfully maintained an Arbitration Policy that precludes class or collective actions by employees, I shall recommend that it be ordered to rescind or revise that policy to make it clear to employees that the Policy and agreements made pursuant to the Policy do not constitute a waiver in all forums of their rights to maintain class or collective actions relating to their wages, hours or other terms and conditions of employment. I shall also recommend that the Respondent be required to notify its employees of the rescinded or revised Policy.

Because the Arbitration Policy has been and continues to be maintained throughout the United States, it is recommended that the Respondent be ordered to post the attached Notice at all locations where the Policy has been or is still in effect.

To the extent that the Charging Party has incurred litigation expenses relating to the Respondent's Petition to compel arbitration in conformance with its Arbitration Policy, it is recommended that the Respondent reimburse the Charging Party for such expenses with interest as determined in *Kentucky River Medical Center*, 356 NLRB 6 (2010), enf. denied on other grounds, sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (DC Cir. 2011).

Additionally, although the Sacramento Superior Court has denied the Respondent's Petitions and Motions to compel arbitration, it is not clear to me that the matter has been finally put to rest and that no appeal has been or will be filed. It therefore is recommended that the Respondent be required to file Motions with the Court in *Smigelski v. PennyMac*, requesting the withdrawal of its motions to compel individual arbitration.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Private National Mortgage Acceptance Company LLC ("PennyMac"), its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining and/or enforcing a policy that compels employees, as a condition of employment waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(b) Requiring employees to sign binding arbitration agreements that prohibit collective and class litigation.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind or revise the mandatory arbitration policy in all of its forms, or revise it in all of its forms, to make clear to employees that the arbitration policy does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums or that requires employees to waive their right to maintain employment-related class and collective claims in all forums, whether arbitral or judicial.

(b) Notify all current and former employees who were required to sign or otherwise become bound by the mandatory arbitration policy in any form that it has been rescinded or revised and, if revised, provide them with a copy of the revised policy.

(c) Withdraw any pending motions for individual arbitration in which the Respondent seeks enforcement of the arbitration policy's unlawful restriction on class or collective claims; or if such motions have already been granted, move the appropriate court to vacate any orders for individual arbitration and reimburse employees for any litigation expenses including attorney's fees, directly related to opposing Respondent's motions to compel individual arbitration.

(d) In the manner set forth in this decision, reimburse Richard Smigelski for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing the Respondent's Motion to compel individual arbitration.

(e) Within 14 days after service by the Region, post at its locations nationwide where the Arbitration Policy has been promulgated, maintained or enforced copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 20 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and /or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, a copy of this notice will be made available to employees on the same basis and to the same group or class of employees as the Arbitration Policy was made available to them. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 10, 2012.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 29, 2016

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain or enforce the MAP policy or any agreements made with employees pursuant to that policy that waives the right to maintain class or collective action in any forum.

WE WILL NOT pursuant to the terms of such agreements enforce them by filing Motions in Court to stay collective action lawsuits and to compel individual arbitrations.

WE WILL NOT require employees to sign binding arbitration agreements that prohibit collective and class litigation.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL withdraw any pending motions in which we have sought to enforce the arbitration policy's unlawful restriction on class or collective claims; or if such motions have already been granted, move the appropriate court to vacate any orders for individual arbitration.

WE WILL reimburse Richard Smigelski for any reasonable litigation expenses, including attorney's fees, directly related to opposing our motions to compel individual arbitration.

PRIVATE NATIONAL MORTGAGE ACCEPTANCE COMPANY LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-170020 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.